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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/455,542	12/07/1999	Steven M. Bessette	45112.041	5288

20277 7590 07/16/2002
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EXAMINER	
LILLING, HERBERT J	
ART UNIT	PAPER NUMBER

1651

DATE MAILED: 07/16/2002 15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/455,542	BESSETTE ET AL.
	Examiner	Art Unit
	HERBERT J LILLING	1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 July 2002.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1 and 4-13 is/are pending in the application.
- 4a) Of the above claim(s) 6-13 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1 and 4-5 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) 6-13 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____. |

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1. The request filed on July 08, 2002 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/445,542 is acceptable and a CPA has been established. An action on the CPA follows.

2. Claims 1, and 4-13 are now pending in this application.

Claims 2, 3 and 14 have been cancelled.

3. Claim 5 is drawn to the elected species.

Claims readable on the elected species are 1 and 4-5.

Claims 6-13 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 6, filed January 08, 2001.

The restriction requirement has been made final.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 4-5 stand rejected as recited in the Final Rejection under 35 U.S.C. 102(b) as anticipated by the references recited in the Final Rejection Office action of October 15, 2001.

The arguments have been deemed not to be persuasive in view of the claimed language. The claims read only on a composition containing the two components which references anticipate thus rendering the claims unpatentable over cited references absent a showing to the contrary.

Applicant has argued that the references do not contain the statement "antiestrogenic activity against E2-induceed abnormal cell growth" which statement is an inherent property of the essential oil, eugenol.

Applicant will not be able to obtain a composition claim drawn to the two agents in the compositions as claimed even if Applicant submits a separate application drawn to each of the essential oils.

It appears very unlikely that the Board of Appeals would overturn the present rejections based on the current record.

5. This is a CPA of applicant's earlier Application No. 09/455,542. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Lilling whose telephone number is (703) 308-2034 and fax number is (703) 308-4242 or SPE Michael Wityshyn whose telephone number is (703) 308-4743. Examiner can be reached Monday-Thursday from about 5:30 A.M. to about 3:00 P.M. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

H.J.Lilling: HJL
(703) 308-2034

Art Unit 1651
July 15, 2002

Dr. Herbert J. Lilling
Primary Examiner
Group 1600 Art Unit 1651